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DEPARTMENT OF STATE

22 CFR Part 42

RIN: 1400-AC86

[Public Notice 8345]

Visas: Documentation of Immigrants under the Immigration and Nationality Act, as Amended

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule amends the Department of State's regulations relating to adoptions in countries party to the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption to include a new adoption provision from the International Adoption Simplification Act. The legislation provides for sibling adoption to include certain children who are under the age of 18 at the time the petition for immediate relative is filed on their behalf, and also certain children who attained the age of 18 on or after April 1, 2008 and who are the beneficiaries of a petition filed on or before November 30, 2012.

DATES: This rule is effective *[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]*.

FOR FURTHER INFORMATION CONTACT: Taylor W. Beaumont, Legislation and Regulations Division, Legal Affairs, Office of Visa Services, Bureau of Consular Affairs, Department of State, 2401 E Street, N.W., Room L-603D, Washington, D.C. 20520-0106, (202)663-2951, email (BeaumontTW@state.gov).

SUPPLEMENTARY INFORMATION:

Background

As used in this public notice, the term “Convention” means The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption; the term “Convention country” means a country that is a party to the Convention and with which the Convention is in force for the United States; and the term “IASA” means the International Adoption Simplification Act, Public Law 111-287 (2010).

On November 30, 2010, the President signed the IASA, modifying the Immigration and Nationality Act (INA) regarding adoptions from Convention countries. Among other changes, the IASA creates a new section in INA section 101(b)(1)(G)(iii) under which U.S. citizens may file an immediate relative petition for a child younger than 18 from a Convention country, provided that the child is the natural sibling of a child concurrently or already adopted or being brought to the United States for adoption under INA section 101(b)(1)(E)(i), (F)(i), or (G)(i). To be eligible under INA section 101(b)(1)(G)(iii), a child must be adopted abroad, or be coming to the United States for adoption, by the adoptive parent(s) or prospective adoptive parent(s) of his/her natural sibling. In addition, the child must be otherwise qualified as a Convention adoptee under INA section 101(b)(1)(G)(i), except that the child is under 18 years of age rather than under 16 years of age (which would be required for classification under INA section 101(b)(1)(G)(i)).

The IASA also contains an exception at section 4(b) that necessitates a revision of the Department regulation published in 22 CFR 42.24. Under that section, an alien older

than 18 years of age nonetheless may be classified as a child under INA section 101(b)(1)(G)(iii) if he or she turned 18 years of age on or after April 1, 2008 and his or her immediate relative petition is filed no later than November 30, 2012. As currently written, the Department's regulations pertaining to INA section 101(b)(1)(G) exclusively cover those children whose adoptions will be governed by the Convention. Although aliens qualified under section 4(b) of the IASA will be emigrating from a Convention country, the Convention only governs the adoption of children under the age of 18. This rule is necessary to change Department regulations to cover aliens properly qualified under section 4(b) of the IASA.

Discussion of Comments on the Proposed Rule

The Department of State published an interim final rule on November 1, 2011, with a 30-day comment period that expired on December 1, 2011 (76 FR 67361). In response, the Department received one comment relative to the proposed rule that supported the changes proposed in this rulemaking as an effort to reunite siblings and families that may be separated as a result of intercountry adoptions.

Summary of the Final Regulation

This final rule establishes new procedures that consular officers will follow in allowing U.S. parents to file an immediate relative petition for a child who is younger than 18 years of age (or who attained the age of 18 on or after April 1, 2008 if the petition is filed for such child on or before November 30, 2012) who is the natural sibling of a child already adopted by the same U.S. citizen parent. The Department published an

interim final rule on November 1, 2011 and, after reviewing the comment, is issuing the rule as final with one change that clarifies which foreign government authority may be considered as the “competent authority” in IASA adoptions for purposes of INA section 101(b)(1)(G)(i)(V)(aa).

REGULATORY FINDINGS

A. Administrative Procedure Act

In accordance with provisions of the Administrative Procedure Act governing rules promulgated by federal agencies that affect the public (5 U.S.C. 553), the Department published a proposed rule and invited public comment.

B. Regulatory Flexibility Act/Executive Order 13272: Small Business

Consistent with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Department certifies that this rule will not have a significant economic impact on a substantial number of small entities. This final rule regulates individual aliens who seek immigrant visas and does not affect any small entities, as defined in 5 U.S.C. 601(6).

C. The Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UFMA), Public Law 104-4, 109 Stat. 48, 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of \$100 million or more by State, local, or tribal governments, or by the private sector. This rule would not result in any such expenditure, nor would it significantly or uniquely affect small governments.

D. The Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by 5 U.S.C. 804, for purposes of congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121. This rule would not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

E. Executive Order 12866

The Department of State does not consider this rule to be a “significant regulatory action” within the scope of section 3(f)(1) of Executive Order 12866. Nonetheless, the Department has reviewed the rule to ensure its consistency with the regulatory philosophy and principles set forth in the Executive Order.

F. Executive Order 13563

The Department of State has considered this rule in light of Executive Order 13563 and affirms that this regulation is consistent with the guidance therein.

G. Executive Orders 12372 and 13132: Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Nor will the rule have federalism implications warranting the application of Executive Orders 12372 and 13132.

H. Executive Order 12988: Civil Justice Reform

The Department has reviewed the regulations in light of sections 3(a) and 3(b)(2) of Executive Order No. 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

I. Executive Order 13175

The Department of State has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of Executive Order 13175 does not apply to this rulemaking.

J. Paperwork Reduction Act

This rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

List of Subjects in 22 CFR Part 42

Aliens, Foreign officials, Immigration, Passports and visas

Accordingly, for the reasons set forth in the preamble, the interim rule published November 1, 2011, at 76 FR 67363, is adopted as final with the following change:

PART 42 - VISAS: DOCUMENTATION OF IMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

1. The authority citation for section 42 is amended to read as follows:

Authority: 8 U.S.C. 1104 and 1182; Pub. L. 105-277; Pub. L. 108-449; 112 Stat. 2681-795 through 2681-801; The Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (done at the Hague, May 29, 1993), S. Treaty Doc. 105-51 (1998), 1870 U.N.T.S. 167 (Reg. No. 31922 (1993)); The Intercountry Adoption

Act of 2000, 42 U.S.C. 14901-14954, Pub. L. 106-279; The International Adoption Simplification Act, Pub.L. 111-287; 8 U.S.C. 1101, 124 Stat. 3058.

2. Section 42.24 is amended by revising paragraph (n)(2) to read as follows:

§ 42.24 Adoption under the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption and the Intercountry Adoption Act of 2000.

* * * * *

(n) * * *

(2) For any alien described in paragraph (n)(1) of this section, the “competent authority” referred to in INA section 101(b)(1)(G)(i)(V)(aa) is a court or governmental agency of a foreign country of origin having jurisdiction and authority to make decisions in matters of child welfare, including adoption. If the competent authority over matters of child welfare no longer has jurisdiction or authority over the alien due to his or her age, then the passport issuing authority of the country of origin may be considered the competent authority for the purposes of INA section 101(b)(1)(G)(i)(V)(aa).

May 2, 2013

(Date)

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